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OFFICE OF PETITIONS

Bell, Boyd, & Lloyd, LLC
PO Box 1135
Chicago, Illinois 60690-1135

In re Application of
Glenn et al
Application No. 10/047819
Patent No. 7,032,626
Filed: January 14, 2002
Attorney Docket no: 755562/D/I

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: DECISION GRANTING PETITION
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This decision is in response to Patentees' "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)" timely filed on May 25, requesting that the Patent Term Adjustment be adjusted from a determination of 311 days to a determination of 431 days at the time of the issuance of the patent.

Patentees' petition is **GRANTED**. The Office will *sua sponte* issue a certificate of correction reflecting an adjustment of 431 days rather than the 311-day amount printed on the front of the patent. The Office will also adjust the PTA calculation reflected in PAIR to reflect this decision.

Patentees argue that the Office erred in asserting a one hundred twenty-day (120) reduction for the miscellaneous incoming letter filed on April 25, 2005. Applicants assert that the alleged miscellaneous incoming letter was in fact an application for patent term adjustment under 37 CFR 1.705(b) and accordingly should not have been considered a failure to engage in reasonable efforts to conclude prosecution of the application.

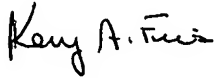
Applicants' argument have been considered and are deemed persuasive. A review of the file reflects that the "miscellaneous incoming letter" filed on May 26, 2005 was in fact the request for reconsideration of pTA under 37 CFR 1.705(b). The Office notes that under 37 CFR 1.704 (e) the submission of an application for patent term adjustment under § 1.705(b) (with or without request under § 1.705(c) for reinstatement of reduced patent term adjustment) will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraph (c)(10) of this section. Accordingly, the Office erred in assessing a one hundred and twenty-day reduction for the submission of the application for patent term adjustment. Accordingly, the correct amount of PTA at the time of mailing of the notice of allowance is 431 days as suggested by patentees.

Application No. 10/047,819

After mailing of this decision, this application will be forwarded to the certificate of correction branch for a prompt issuance of a certificate of correction.

The Office acknowledges the receipt of \$200.00 for the application for patent term adjustment (petition). The Office has assessed the \$200.00 fee under the deposit account and has cashed the \$200.00 check. However, since the reason for the submission of the petition under 37 CFR 1.705(d) is solely the reduction for PTA under 37 CFR 1.705(b) the Office will not assess any fee. \$400.00 will be refunded to patentees by way of crediting deposit account 02-1818.

Any questions concerning the issuance of this patent should be directed to Kery A. Fries, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy at 571-272-7757



Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

cc: Adjusted Pair Calculation
Draft Certificate of Correction